

IN THE \_\_\_\_\_ JUDICIAL DISTRICT COURT  
EL PASO COUNTY, TEXAS

THE STATE OF TEXAS	§	
EX REL. OMAR CARMONA	§	
	§	
Relator-Plaintiff	§	
	§	
V.	§	
	§	2022DCV _____
YVONNE ROSALES	§	
	§	
<u>In Her Official Capacity as</u>	§	
<u>District Attorney of the 34<sup>th</sup></u>	§	
<u>Judicial District</u>	§	
	§	
<u>Respondent-Defendant</u>	§	

**PETITION TO REMOVE**  
**DISTRICT ATTORNEY OF THE 34<sup>TH</sup> JUDICIAL DISTRICT**  
**YVONNE ROSALES AND JURY DEMAND**

TO THE HONORABLE DISTRICT JUDGE OF THIS COURT:

COMES NOW, the STATE OF TEXAS, by the relation of OMAR CARMONA (“Carmona”), and files its Petition to Remove District Attorney Yvonne Rosales and Jury Demand against Respondent-Defendant YVONNE ROSALES (“Rosales”) in her official capacity as District Attorney of the 34<sup>th</sup> Judicial District, seeking Rosales’s removal from her public office pursuant to Chapter 87 of the Local Government Code, and in support would respectfully show as follows:

**DISCOVERY CONTROL PLAN**

1. Discovery will proceed under a Level 3 discovery control plan as set out in Texas Rule of Civil Procedure 190.4.

**PARTIES**

2. Omar Carmona is a resident of El Paso County, Texas. Carmona has resided in El Paso County continuously since at least 2007. Pursuant to Local Government Code section 87.018, Carmona is acting in the capacity of relator in this action being brought by the State of Texas. As required by Local Government Code section 87.015(b), Carmona is not nor has he ever been under indictment for any crime in any jurisdiction.
3. Defendant Yvonne Rosales is the current elected District Attorney for the 34<sup>th</sup> Judicial District, having been duly elected to that position in 2020. Rosales resides in El Paso County. Rosales may be served with citation at her place of employment at the District Attorney's Office, 500 E. San Antonio Ave. 2<sup>nd</sup> floor, El Paso, Texas, 79901.

#### **JURISDICTION AND VENUE**

4. Pursuant to Texas Local Government Code section 87.015, this cause is being filed in the county of Rosales' residence.
5. The subject matter is within the jurisdiction of this court.
6. All parties are subject to this court's personal jurisdiction.

#### **FACTS**

7. Rosales is the current elected District Attorney for the 34<sup>th</sup> Judicial District serving El Paso County, Hudspeth County and Culberson County, Texas. She was duly elected to her position in 2020 and sworn-in in January, 2021.
8. Under Texas law, a Texas district attorney is responsible for representing the State in all criminal cases in the district courts of her district, and in appeals therefrom.
9. During all relevant times, Rosales committed the following unlawful actions:
  - a. Unexplainable Decline in Criminal Case Filings

- i. In Rosales's first year as District Attorney, she filed approximately 60% fewer felony and misdemeanor assault cases against alleged abusers, despite an overall rise in family violence arrests within the city of El Paso.
- ii. In 2021, El Pasoans made approximately 26,000 calls to police regarding domestic violence.
- iii. Also in 2021, El Paso Police Officers made more than 2,000 family violence arrests.
- iv. Inexplicably, Rosales only filed 374 misdemeanor charges for assault family violence causing bodily injury and secured only 311 grand jury indictments for family violence felonies in 2021.
- v. Further, Rosales disposed of 2,098 cases in 2021; this is compared to the prior District Attorney disposing of 24,503 cases in 2020.

b. Capital Murder—Death Penalty Dismissal

- i. On or about December 14, 2021, the 210<sup>th</sup> Judicial District Court dismissed a capital murder—death penalty prosecution due to prosecutorial vindictiveness, in the cause entitled *State of Texas v. Ivan Gabaldon*, 20210D00530 and 20210D02929.
- ii. The Court found that Rosales's office attempted to delay the case by increasing the gravity of the charges against the defendant.
- iii. It also found that Rosales's office sought the death-penalty solely to penalize the defendant for exercising his Constitutional right to a trial.

iv. Upon information and belief, a capital murder-death penalty case has never been dismissed before in El Paso County due to a judicial finding of prosecutorial vindictiveness.

c. Mishandling of Mass Murder Case

i. On or about July 1, 2022, the 409<sup>th</sup> Judicial District Court held a status hearing in the mass murder cause entitled *State of Texas v. Patrick Wood Crusius*, 20190D004878 and 20200D02631.

ii. Therein, the Court rebuked Yvonne Rosales for press release stating that she would be ready to try this capital murder-death penalty case in less than a year, while at the same time failing to file a single pleading or motion in the prior eighteen-months of Rosales's tenure.

iii. Further, Rosales publicly commented that she will continue to prepare for a trial in less than one year, while at the same time agreeing that new attorneys would be hired to litigate the case; this implies that these new attorneys have not set their eyes on a single iota of evidence.

d. Misuse of Public Funds

i. On or about November 30, 2021, the Texas Ethics Commission released an opinion, stating that Rosales had used governmental resources for political purposes.

ii. Rosales's actions potentially violated Texas Penal Code 39.02(a) and constituted an Abuse of Official Capacity.

e. Dismissal of Hundreds of Criminal Case due to Prosecutorial Inaction

- i. On or about August 15, 2022, the Jail Magistrate Judge dismissed approximately 370 criminal cases.
- ii. Each of these dismissals was due to Rosales's violation of Texas Code of Criminal Procedure 32.01.
- iii. The sheer number of dismissals, with thousands more expected, is unprecedented within El Paso County.

**CAUSE OF ACTION ONE: INCOMPETENCY**

10. The foregoing facts are incorporated in this section, as if set out fully herein.
11. Pursuant to Texas Local Government Code Section 87, a district attorney may be removed from office for incompetency.
12. The same statute defines Incompetency as “(A) gross ignorance of official duties; (B) gross carelessness in the discharge of those duties; or (C) unfitness or inability to promptly and properly discharge official duties because of a serious physical or mental defect that did not exist at the time of the officer's election.” TEX. LOC. GOV'T CODE § 87.011.
13. During the time of the foregoing facts, Rosales was engaged in official duties as the elected District Attorney.
14. Her conduct demonstrates gross ignorance of official duties or gross carelessness in the discharge of those duties.
15. Allowing her to continue as District Attorney puts the public at risk and demeans the office.

**CAUSE OF ACTION TWO: OFFICIAL MISCONDUCT**

16. The foregoing facts are incorporated in this section, as if set out fully herein.

17. Pursuant to Texas Local Government Code Section 87, a district attorney may be removed from office for official misconduct.
18. Official Misconduct is defined as “intentional, unlawful behavior relating to official duties by an officer entrusted with the administration of justice or the execution of the law. The term includes an intentional or corrupt failure, refusal, or neglect of an officer to perform a duty imposed on the officer by law.” TEX. LOC. GOV’T CODE § 87.011.
19. During the time of the foregoing facts, Rosales was engaged in official duties as the elected District Attorney.
20. Her conduct demonstrates each element of official misconduct.
21. Her conduct exhibits an intentional and knowing violation of the law by a public servant.
22. Allowing her to continue as District Attorney puts the public at risk and demeans the office.

#### **CONCLUSION**

23. Rosales’s official misconduct and continued incompetence clearly disqualifies her from continuing in her elected position.
24. Under the circumstances, Rosales has demonstrated that she should be removed from the office to which she was elected.

#### **JURY DEMAND**

25. As required by Local Government Code section 87.018, a jury trial is demanded.

#### **PRAYER FOR RELIEF**

WHEREFORE, PREMISES CONSIDERED, the State of Texas through Relator, Omar Carmona, respectfully requests that:

- a. The Court order that citation and a certified petition be served on Rosales;
- b. The Court temporarily suspend Rosales and appoint another person to perform the duties of the office, in accordance with Local Government Code section 87.017;
- c. After service of citation, Defendant Rosales be summoned to answer this suit within the time required by law;
- d. After trial on the merits, a jury finding be entered that Yvonne Rosales is incompetent, and/or that she committed official misconduct, thereby warranting removal from office pursuant to Local Government Code Chapter 87, and that Rosales be so removed; and
- e. The Court award court costs to the State and/or Relator and any other relief to which it may be entitled.

Respectfully Submitted,



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OMAR CARMONA

Relator

221 N. Kansas St. Suite 1200

El Paso, TX 79901

(915) 225-1555

omar@clmfirm.com

#### **CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the above foregoing document was delivered to Yvonne Rosales, District Attorney at 500 E. San Antonio, El Paso, Texas 79901, by electronic means on even date with the filing hereof and by hand delivery.



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OMAR CARMONA





VERIFICATION

STATE OF TEXAS  
EL PASO COUNTY

§  
§

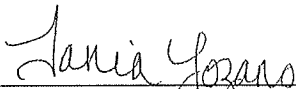
Before me, the undersigned notary, on this day personally appeared Omar Carmona, the affiant, whose identity is known to me. After I administered an oath, affiant testified as follows:

“My name is Omar Carmona. I am capable of making this verification. I have read the PETITION TO REMOVE DISTRICT ATTORNEY OF THE 34TH JUDICIAL DISTRICT YVONNE ROSALES AND JURY DEMAND. The facts stated in it are within my personal knowledge and are true and correct.”



\_\_\_\_\_  
OMAR CARMONA

Sworn to and subscribed before me by Omar Carmona on August 24, 2022.



\_\_\_\_\_  
Notary Public in and for the State of Texas

